

In United States District Court  
For the District of Delaware

UNITED STATES OF AMERICA

Criminal Complaint

v.

CASE NUMBER: 07- 37M-MPT

TONY L. CLARK,  
Defendant

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about Feb. 28, 2007 in the District of Delaware, Defendant Tony L. Clark did knowingly possess in and affecting interstate commerce, a firearm, after having been convicted of a felony crime punishable by imprisonment for a term exceeding one year,

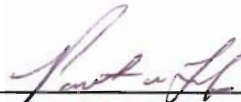
in violation of Title 18 United States Code, Section(s) 922(g)(1) and 924(a)(2).

I further state that I am a(n) Special Agent, ATF and that this complaint is based  
Official Title  
on the following facts:

See attached Affidavit

Continued on the attached sheet and made a part hereof: Yes



  
Patrick Fyock  
Special Agent, ATF

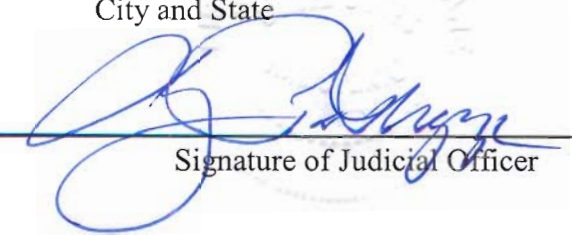
Sworn to before me and subscribed in my presence,

March 1,  
Feb. 28, 2007

Date

at Wilmington, DE  
City and State

Honorable Mary Pat Thyng  
United States Magistrate Judge  
Name & Title of Judicial Officer

  
Signature of Judicial Officer

### AFFIDAVIT OF PATRICK FYOCK

1. Your affiant Patrick Fyock. Your affiant has been a Special Agent for over five and a half years with the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives(ATF). During that time, my duties have included the investigation of federal and state firearms offenses. Prior to being hired by ATF, I was employed as a Police Officer for seven years with the Nationally Accredited New Castle County Police Department in Delaware. During the course of your affiant's law enforcement career, your affiant has received law enforcement training on the investigation of firearms offenses on numerous occasions, including but not limited to the ATF Academy, New Castle County Police Academy, Firearms identification classes, Firearms Nomenclature classes, Firearms identification classes at the Federal Law Enforcement Training Center. During the course of your affiant's law enforcement career, your affiant has participated in over 80 seizures of firearms and well over 120 investigations of firearms offenses, as well as numerous conversations about the facts and circumstances of firearms offenses with the investigating officers of those firearms offenses.

2. Unless otherwise stated, the information in this affidavit is based upon your affiant's personal knowledge and conversations with Wilmington Police Officers.

3. The seizure of all the below stated evidence occurred on February 28, 2007, in the City of Wilmington, State and District of Delaware, as stated to me by one or more Wilmington Police Officers with personal knowledge of the seizure of the below items.

4. Your affiant reviewed the computer criminal history information for the defendant from the Delaware Justice Information System (DELJIS) and learned that the defendant has a prior felony conviction for Theft of a Firearm from on or about 09/10/2002 in the Superior Court of the State of Delaware, a crime punishable by imprisonment for a term exceeding one year.

5. Your affiant learned the following that police offices were on patrol in the area of 5<sup>th</sup> and Pine streets and observed a subject, later identified as Tony L. Clark, loitering in the area of the nearby school. It should be noted that the same subject was observed by officers as they drove past on two previous occasions. When the uniformed police officers attempted to contact this subject he immediately fled. The subject fled through a parking lot to Spruce Street then on to 5<sup>th</sup> Street and into an alley. At this point the pursuing officer lost sight of the subject and began to check the vacant buildings and backyards that border the alley. Assisting police officers notified the initial officer that they had detained a subject who was exiting the alley. The Wilmington police officer who pursued the subject responded to the end of the alley and positively identified the subject as the same male who fled from him. The subject was detained and identified as Tony L. Clark.

6. A concerned citizen (cc1) notified a Wilmington Police Officer and stated he was told by a caller with whom he is associated (caller) essentially that the caller was with others in the area and they observed the above mentioned foot chase and saw the subject being chased discard an

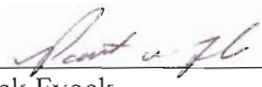
item over a wood fence in the alley while being chased by police.

7. Your affiant was informed that Wilmington police detectives responded to the area of the previous foot chase, as described by caller and located a Smith & Wesson, Model 36, .38 caliber revolver, serial number 609044.

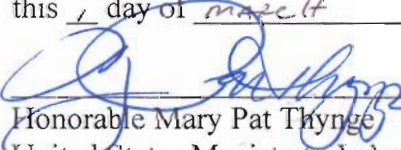
8. It should be noted that S/A Patrick Fyock spoke to the cc1 via phone and was told that the caller informed cc1 that the caller and others were in the area and observed the foot chase and arrest. Cc1 also stated that caller told him the subject who was being chased by police first attempted to gain access to a house and when he could not gain access he walked away and as he passed a wooden fence in the alley he threw an unknown object over the fence and into a backyard. Cc1 also stated that the caller told him a short time after the caller and his associates observed the subject taken into custody they walked to the area and observed a gun. That is when the caller first advised cc1 of the incident, who called police.

9. From my training and experience, and prior discussion with an ATF Agent who is expertly trained and experienced in determining the interstate nexus of firearms, your affiant knows that the Smith & Wesson Model 36 .38 caliber serial number 609044 was manufactured in a state other than Delaware such that its possession in Delaware would have necessarily required that the firearm had crossed state lines prior to its possession in Delaware and such that the possession of that firearm in Delaware affected interstate commerce.

Wherefore, based upon your affiant's training and experience, your affiant believes that there is probable cause to believe that the defendant violated 18 U.S.C. 922(g) and 924(a)(2) by possessing in and affecting interstate commerce a firearm, after having previously been convicted of a felony crime punishable by imprisonment for a term exceeding one year and respectfully requests that the Court issue a Criminal Complaint charging that offense.

  
\_\_\_\_\_  
Patrick Fyock  
Special Agent, ATF

Sworn to and subscribed in my presence  
this 1 day of march 2007

  
\_\_\_\_\_  
Honorable Mary Pat Thyng  
United States Magistrate Judge  
District of Delaware